

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DAN-DEE INTERNATIONAL LIMITED and : 08 CIV 4715 (NRB)
LEE CAPOZZI, :
: Plaintiffs, : DECLARATION OF LIONEL B.
: : NEFF IN SUPPORT OF MOTION
: : TO TRANSFER VENUE
: v. :
: PBC INTERNATIONAL, INC., :
: Defendant. :-----X

LIONEL B. NEFF hereby declares the truth of the following under penalty of perjury:

1. I am the President and Chief Executive Officer of defendant PBC International, Inc. ("PBC").
2. PBC is a California corporation which has its sole place of business in Oxnard, California, which I am advised is in the Central District of California. PBC has no employees or agents in the State of New York. PBC has no offices, physical facilities, bank accounts, telephone numbers or inventory storage in the State of New York. PBC is not licensed to do business in New York and is not liable for and pays no New York State income taxes.
3. The sole contact between PBC and the State of New York relates to the sale of goods by PBC to retail outlets operating in the State of New York. Those sales are made from PBC's office in Oxnard, California.
4. In the fall of 2006, I traveled to China and met with Martin Gao, a representative of Shanghai TS Toys Co., Ltd. ("Shanghai"), a Chinese company. I was

shown a sample of the product accused in this action to infringe claims to copyright allegedly owned by the plaintiffs. It was represented to me that the visual appearance of the product and the sound recording that was incorporated into the product were designed and owned by Shanghai.

5. PBC entered into an agreement with Shanghai pursuant to which all rights in the product in issue owned by Shanghai would be assigned to PBC. A copy of the Assignment is attached as Ex. A.

6. PBC registers claims to copyright in the visual images and sound recordings that it either designs itself or acquires by assignment. In the belief that the representations by Shanghai as to its ownership of the product were true, and having no reason to believe otherwise, PBC registered the appearance of the product and the sound recording and is the owner of registered Claims to Copyright Nos. VA 1-425-681 and SR 410-711, effective March 26, 2007. Copies of the Certificates of Registration are attached as Ex. B.

7. All of PBC's operations, in general and in connection with the product accused in this action to be infringing were performed in Oxnard, California, including the handling of the assignment of design, copyrights and licensing, the marketing and sales operations, and the shipping and distribution.

8. I was the person at PBC that made the decision to proceed with acquiring the copyrights in the product in issue, as well as the decision to market and sell the product. As President and CEO of PBC, I am the sole individual responsible for supervising selection of products and the manufacturing thereof. I am also ultimately responsible for overseeing all sales and promotional efforts. If I am absent from PBC's

offices, there is no one who can perform the duties that I perform for PBC. If I am required to be absent from PBC's offices for the trial of this action in New York, my absence is likely to have a substantial effect on PBC, which has only thirty employees.

9. In addition to myself, none of the witnesses with knowledge of the relevant facts and whom PBC would call to testify at trial are located in New York, and most are located in California. These witnesses and their areas of knowledge and responsibility are as follows:

- a. Sheri DeLeo, Chief Financial Officer of PBC, located in Oxnard, California. Ms. DeLeo, among other things, coordinated the order of the accused product to the largest purchaser of the product.
- b. Martha Banuelos, Head Buyer and Coordinator of PBC, located in Oxnard, California. Ms. Banuelos attended the meeting with me in China with Shanghai when the accused product was first presented to PBC. Ms. Banuelos also arranged for all the orders placed for the product.
- c. Cynthia Norton, licensing coordinator for PBC, located in Oxnard, California. Ms. Norton coordinated the assignment of design, copyrights and licensing of the product in issue.
- d. Collina Meyer, Art Director of PBC, located in Oxnard, California. Ms. Meyer headed up the team that reviewed the product and created the sales materials.
- e. Linda Senn, Assistant Art Director of PBC, located in Oxnard, California. Ms. Senn assisted Ms. Meyer in her functions.

- f. Steve Markham, Sales Manager of PBC, located in Oxnard, California. Mr. Markham was involved in the sale of the product to distributors.
- g. Joe Anderson, Sales Manager of PBC, located in Oxnard, California. Mr. Anderson sold the product to small retailers and managed the sales force.
- h. Craig Burns, formerly a sales manager of PBC, no longer employed by PBC but located in Newbury Park, California. Mr. Burns presented and sold the product to Dillard's, PBC's largest purchaser of the product.
- i. Fausto Esqueda, Shipping and Domestic Production Manager of PBC, Manager of PBC, located in Oxnard, California. Mr. Esqueda oversaw the filling of orders for the accused product.
- j. Reed Olson, International Director, located in Minneapolis, Minnesota. Mr. Olson was also present at the meeting with Shanghai in China.

10. All of the witnesses identified above are crucial witnesses on behalf of PBC, and none of these witnesses are located in New York. Indeed, including myself, ten of the eleven witnesses PBC expects to call to support its defense of the claims reside in California. The tenth is in Minnesota.

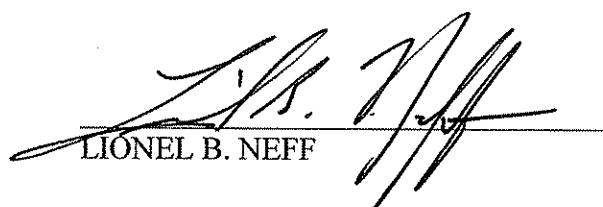
11. In addition to these witnesses, PBC would intend to call a witness with Shanghai to testify as to the creation and ownership of the accused product.

12. With respect to the sales of the accused product, PBC sold 21,989 units, for gross sales of \$265,404. Of those sales, less than 1% (approximately \$2,100 in gross sales, or 175 units) were sold to retail outlets in New York. In comparison, 1,642 units, with gross sales of \$21,478.80 (approximately 7.5%) were sold to customers in California.

13. In addition, in defense of this action, PBC will offer evidence in the nature of documents, art work and prototypes illustrating the evolution of the accused product. In addition, documents relevant to the business relationship between PBC and Shanghai, as well as PBC's sales and marketing of the accused product will be offered. All documents and physical evidence are maintained at PBC's office in Oxnard, California.

14. I declare under penalty of perjury of the laws of California that the foregoing is true and correct and within my personal knowledge and would testify to same if called to do so.

Executed this 25th day of August, 2008 at Oxnard, California.



LIONEL B. NEFF

A handwritten signature in black ink, appearing to read "L.B. Neff". Below the signature, the name "LIONEL B. NEFF" is printed in a standard font.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that the foregoing document was served on all counsel of record on August 26, 2008 by filing the document on the Court's Electronic Filing System and that service was made electronically through such system.

Dated: New York, New York
August 26, 2008

/s/ Andrew L. Margulis
ANDREW L. MARGULIS

EXHIBIT A

COPY

ASSIGNMENT OF DESIGN

The undersigned HUANG AN KID'S FUN TOY CO., LTD.

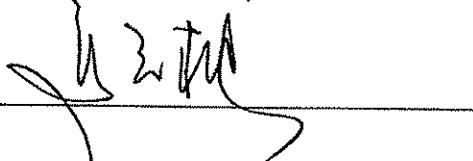
(hereinafter referred to as "Designer"), for good and valuable consideration, receipt of which is hereby acknowledged, and to the extent the undersigned may have contributed to the Design, if at all, does hereby assign, transfer and grant to PBC International, Inc., and its successors, licensees and assigns (hereinafter referred to as "PBC"), all of Manufacturer's rights of copyright in and to the work tentatively entitled ITEM #G5046 12" FLIP CELL PHONE DOG SINGS "JINGLE BELLS/DECK THE HALLS/SANTA CLAUS IS COMING TO TOWN", including, but not limited to, all rights of copyright under the laws of the United States and any renewals, extensions or revivals thereof and the right to copyright the same which PBC may do in its name or in the name of its nominee(s). To the extent that the Designs or any materials contained therein or prepared therefor or the copyrights therein do not vest in PBC by reason of same being a work made for hire, Manufacturer hereby grants, assigns and transfers to PBC all right, title and interest in and to the Designs and all materials contained therein or prepared therefor and the results and proceeds thereof to the extent that Manufacturer has had or will have any right, title or interest therein.

Dated: March 2, 2007

HUANG AN KID'S FUN TOY CO., LTD.

(Manufacturer)

By:



COPY

ASSIGNMENT OF RECORDING

The undersigned SHANGHAI TS TOYS CO., LTD

(Hereinafter referred to as

"Designer"), for good and valuable consideration, receipt of which is hereby
Acknowledged, and to the extent the undersigned may have contributed to the Design,
If at all, does hereby assign, transfer and grant to PBC International, Inc., and its
Successors, licensees and assigns (hereinafter referred to as "PBC"), all of Manufacturer's
Rights of copyright in and to the work tentatively entitled ITEM # G5046 FLIP
RECORDED WITH "JINGLE BELLS, DECK THE HALLS, SANTA CLAUS
IS COMING TO TOWN including, but not limited to,
all rights of copyright Under the Laws of the United States and any renewals,
extensions or revivals thereof and the right to Copyright the same,
which PBC may do in its name or in the name of its nominee(s). To
The extent that the Designs or any materials contained therein or prepared there for or the
Copyrights therein do not vest in PBC by reason of same being a work made for hire,
Manufacturer hereby grants, assigns and transfers to PBC all right, title and interest in
And to the Designs and all materials contained therein or prepared there for and the
results
And proceeds thereof to the extent that Manufacturer has had or will have any right, title
Or interest therein.

Dated: 03-02-2007

SHANGHAI TS TOYS CO., LTD.

By:

(Manufacturer)

EXHIBIT B

COPY**Certificate of Registration**

This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

C Form SR
For a Sound Recording
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

SR 410-711



EFFECTIVE DATE OF REGISTRATION

3 26 07

Month Day Year

DO NOT WRITE ABOVE THIS LINE IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET

TITLE OF THIS WORK ▼

1

Medley of Jingle Bells, Deck the Halls and Santa Claus is Coming to Town

PREVIOUS, ALTERNATIVE, OR CONTENTS TITLES (CIRCLE ONE) ▼

2

NAME OF AUTHOR ▼
PBC INTERNATIONAL, INC

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?

Yes

No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

OR Citizen of ► USA
Domiciled in ► USA

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK If the answer to either of these questions is
Anonymous? Yes No Yes see detailed
Pseudonymous? Yes No instructions

NOTE

Under the law the author of a work made for hire is generally the employer not the employee (see instructions). For any part of this work that was made for hire check "Yes" in the space provided give the employer (or other person for whom the work was prepared), as Author, of that part and leave the space for dates of birth and death blank

b

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?

Yes

No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

OR Citizen of ► USA
Domiciled in ► USA

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK If the answer to either of these questions is
Anonymous? Yes No Yes see detailed
Pseudonymous? Yes No instructions

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed ▼

Sound recording of Jingle Bells, Deck the Halls and Santa Claus is Coming to Town

c

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?

Yes

No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

OR Citizen of ► USA
Domiciled in ► USA

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK If the answer to either of these questions is
Anonymous? Yes No Yes see detailed
Pseudonymous? Yes No instructions

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed ▼

3 **a** **YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED**

2007

This information must be given in all cases

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

b Complete this information ONLY if this work has been published Month ► March Day ► 2 Year ► 2007 U.S.A. Nation

4 **a** **COPYRIGHT CLAIMANT(S)** Name and address must be given even if the claimant is the same as the author given in space 2 ▼
PBC INTERNATIONAL, INC
P O Box 5767
Oxnard, California 93031

APPLICATION RECEIVED
MAR 26 2007
ONE DEPOSIT RECEIVED

DO NOT WRITE HERE
OFFICE USE ONLY
TWO DEPOSITS RECEIVED
FUND RECEIVED
MAR 26 2007

b

MORE ON BACK ▶

Complete all applicable spaces (numbers 5-9) on the reverse side of this page
See detailed instructions

Sign the form at the bottom

DO NOT WRITE HERE
Page 1 of 2 pages

EXAMINED BY

DSH

FORM SR

CHECKED BY

CORRESPONDENCE

 YesFOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

- Yes No If your answer is 'Yes' why is another registration being sought? (Check appropriate box) ▼
- This work was previously registered in unpublished form and now has been published for the first time
 - This is the first application submitted by this author as copyright claimant
 - This is a changed version of the work, as shown by space 6 on this application

If your answer is "Yes" give Previous Registration Number ▼

Year of Registration ▼

5

DERIVATIVE WORK OR COMPILATION

Preexisting Material Identify any preexisting work or works that this work is based on or incorporates ▼

- a.** Medley of 1857 Sound Recording of Jingle Bells, 1881 Sound Recording of Deck the Halls, and 1934 Sound Recording of Santa Claus is Coming to Town

See instructions
before completing
this space

6

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed ▼

b Sound Recording

DEPOSIT ACCOUNT If the registration fee is to be charged to a deposit account established in the Copyright Office, give name and number of Account Name ▼ Account Number ▼

7

a

CORRESPONDENCE Give name and address to which correspondence about this application should be sent Name/Address/Apt/City/State/Zip ▼

b Michael A Painter, Esq., Isaacman, Kaufman & Painter
 8484 Wilshire Boulevard, Suite 850
 Beverly Hills, California 90211

Area code and daytime telephone number 323-782-7700
 Email painter@kpplaw.com

Fax number 323-782-7744

8

CERTIFICATION* I, the undersigned, hereby certify that I am the
 Check only one ▼

- author owner of exclusive right(s)
 other copyright claimant authorized agent of PBC INTERNATIONAL, INC

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge

Typed or printed name and date ▼ If this application gives a date of publication in space 8, do not sign and submit it before that date

LIONEL B NEFF, President

Date 3/15/07

Handwritten signature (x) ▼

X

Certificate
will be
mailed in
window
envelope
to this
address

Name ▼	Michael A Painter, Esq., Isaacman, Kaufman & Painter
Number/Street/Apt ▼	8484 Wilshire Boulevard, Suite 850
City/State/Zip ▼	Beverly Hills, California 90211

YOU MUST:

Complete all necessary spaces
 Sign your application in space 8SEND ALL 3 ELEMENTS
IN THE SAME PACKAGE:

- 1 Application form
- 2 Nonrefundable filing fee in check or money order payable to Register of Copyrights
- 3 Deposit material

MAIL TO:

Library of Congress
 Copyright Office
 101 Independence Avenue SE
 Washington, DC 20559-0000

9

17 USC §506(e) Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409 or in any written statement filed in connection with the application shall be fined not more than \$2 500

(cc), phone, fax)

Certificate of Registration

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

A handwritten signature in black ink that reads "Marybeth Peters".

Register of Copyrights, United States of America

COPY
G Form VA
 For a Work of the Visual Arts

VA 1-425-681



EFFECTIVE DATE OF REGISTRATION

MAR 26 2007

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

Title of This Work ▼

1

Flip #G5046

NATURE OF THIS WORK ▼ See Instructions

Stuffed plush toy dog

Previous or Alternative Titles ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼

Number ▼

Issue Date ▼

On Page ▼

NAME OF AUTHOR ▼

PBC INTERNATIONAL, INC.

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

2**a**Was this contribution to the work a "work made for hire"?
 Yes
 NoAuthor's Nationality or Domicile
 Name of Country
 OR Citizen of _____
 Domiciled in U.S.A.Was This Author's Contribution to the Work
 Anonymous? Yes No
 Pseudonymous? Yes No

If the answer to either of these questions is "Yes," see detailed instructions.

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire", check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

Name of Author ▼

Was this contribution to the work a "work made for hire"?
 Yes
 NoAuthor's Nationality or Domicile
 Name of Country
 OR Citizen of _____
 Domiciled in _____Dates of Birth and Death
 Year Born ▼ Year Died ▼Was This Author's Contribution to the Work
 Anonymous? Yes No
 Pseudonymous? Yes No

If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). See Instructions
 3-Dimensional sculpture
 2-Dimensional artwork
 Reproduction of work of art Map
 Photograph
 Jewelry design
 Technical drawing
 Text
 Architectural workNature of Authorship Check appropriate box(es). See Instructions
 3-Dimensional sculpture
 2-Dimensional artwork
 Reproduction of work of art Map
 Photograph
 Jewelry design
 Technical drawing
 Text
 Architectural work**3**a Year in Which Creation of This Work Was Completed
2007b This information must be given.
Year in all cases.Date and Nation of First Publication of This Particular Work
Complete this information Month March Day 2 Year 2007
ONLY if this work has been published.

U.S.A. Nation

4COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.
PBC INTERNATIONAL, INC.P.O. Box 5767
Oxnard, California 93031

Transfer if the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

FUND RECEIVED

DO NOT WRITE HERE
OFFICE USE ONLYMORE ON BACK ► • Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
See detailed instructions. • Sign the form at the bottom.DO NOT WRITE HERE
Page 1 of 2 pages

EXAMINED BY *LB*

FORM VA

CHECKED BY

CORRESPONDENCE

FOR
COPYRIGHT
OFFICE
USE
ONLY

Yes

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.**PREVIOUS REGISTRATION** Has registration for this work or for an earlier version of this work, already been made in the Copyright Office? Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼a. This is the first published edition of a work previously registered in unpublished form.b. This is the first application submitted by this author as copyright claimant.c. This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give Previous Registration Number ▼

Year of Registration ▼

5

DERIVATIVE WORK OR COMPILED Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

6

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

a See instructions before completing this space

b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

a

7

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼Michael A. Painter, Esq., Isaacman, Kaufman & Painter
8484 Wilshire Boulevard, Suite 850
Beverly Hills, California 90211

Area code and daytime telephone number (323) 782-7700

Fax number (323) 782-7744

Email painter@lkplaw.com

CERTIFICATION* I, the undersigned, hereby certify that I am the

check only one ▶

- author
 other copyright claimant
 owner of exclusive right(s)
 authorized agent of PBC INTERNATIONAL, INC.
Name of author or other copyright claimant, or owner of exclusive rights ▼

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Lionel B. Neff, President

Date 3/15/01

Handwritten signature (X) ▼

X

Certificate will be mailed in window envelope to this address:

Name ▼ Michael A. Painter, Esq., Isaacman, Kaufman & Painter

Number/Street/Apt. ▼

8484 Wilshire Boulevard, Suite 850

City/State/ZIP ▼

Beverly Hills, California 90211

YOU MUST

- Complete all necessary spaces
- Sign your application in space 3
- SEND ALL 3 ELEMENTS IN ONE ENVELOPE
- IN THE SAME PACKAGE

1. Application form
2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
3. Deposit material

MAIL TO:

Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20559-6000

8

9

*17 U.S.C. 550(e). Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 403, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.